Motors will succeed because we will be meddling every single day, and GM will never have time to design, build, and make cars. Instead, the government could declare a stock dividend within the next few months, which should be relatively easy to do because we have the names and the accounts of the 120 million people who pay taxes on April 15. The principle here is: they paid for it, they might as well own it. So if the taxpayers own it, and that is good for them, and if getting rid of the stock from the government is good for the government and good for General Motors—just like creating a fan base of 120 million Americans who might be interested in the next Chevy, like Green Bay Packers fans are interested in the next quarterback—then, it seems to me this is a very wise idea.

I have talked with a number of corporate lawyers and bankruptcy lawyers and securities lawyers. I have discussed it with Governors. I have discussed it with financial officials. And I have talked about it with average Americans who are not happy about the fact that the government owns 60 percent of General Motors. They all think this stock distribution is a good idea.

I am afraid some of my colleagues think: Well, he is just making a point. He is just being facetious. I am not. We need to get rid of this stock. We almost all agree with that. It will take us years to do it if we sell it just in an orderly way over a period of time. The single best familiar way to get the stock out of the hands of the government and into the hands of the marketplace is a stock dividend. Give the stock to the people who have now paid almost $70 billion for it—the 120 million people who pay taxes on April 15—and let's get this economy moving again.

Not many weeks ago, a visiting European auto executive said to me, with a laugh, that he was in Washington, DC, which he referred to as ''the new American automotive capital: Washington, DC.'' Well, it would be a little humorous if it were not so sad. None of us like the fact that we are in the situation we are in. But to give General Motors and Chrysler a chance to succeed, let's get our auto companies out of the hands of Washington, DC, and back into the marketplace. And the sooner the better. The amendment I offer will achieve that purpose.

At this point, I wish to once again ask unanimous consent to set aside the pending amendment and call up my amendment No. 1862.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from Tennessee [Mr. ALEXANDER] proposes an amendment numbered 1862 to amendment No. 1813.

Mr. ALEXANDER. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To limit disbursement of additional funds under the Troubled Asset Relief Program to certain automobile manufacturers, to impose fiduciary duties on the Secretary of the Treasury with respect to shareholders of such automobile manufacturers, to require the issuance of shares of common stock to eligible taxpayers which represent the common stock holdings of the United States Government in such automobile manufacturers, and for other purposes)

On page 68, between lines 15 and 16, insert the following:

SEC. _____. RESTRICTIONS ON TARP EXPENDITURES FOR AUTOMOBILE MANUFACTURERS; FIDUCIARY DUTY TO TAXPAYERS; REQUIRED ISSUANCE OF COMMON STOCK TO TAXPAYERS.

(a) SHORT TITLE.—This section may be cited as the ''Auto Stock for Every Taxpayer Act''.

(b) PROHIBITION ON FURTHER TARP FUNDS.—Notwithstanding any provision of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.) or any other provision of law, the Secretary may not expend or obligate any funds made available under that Act on or after the date of enactment of this Act with respect to any designated automobile manufacturer.

(c) FIDUCIARY DUTY TO SHAREHOLDERS.—With respect to any designated automobile manufacturer, the Secretary, and the designee of the Secretary who is responsible for the exercise of shareholder voting rights with respect to a designated automobile manufacturer pursuant to assistance provided under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), shall have a fiduciary duty to each eligible taxpayer for the maximization of the return on the investment of the taxpayer under that Act, in the same manner, and to the same extent that any director of an issuer of securities has with respect to its shareholders under the securities laws and all applicable provisions of State law.

(d) REQUIRED ISSUANCE OF COMMON STOCK TO ELIGIBLE TAXPAYERS.—Not later than 1 year after the emergence of any designated automobile manufacturer from bankruptcy protection described in subsection (f)(1)(B), the Secretary shall direct the designated automobile manufacturer to issue through the Secretary a certificate of common stock to each eligible taxpayer, which shall represent such taxpayer's per capita share of the aggregate common stock holdings of the United States Government in the designated automobile manufacturer on such date.

(e) CIVIL ACTIONS AUTHORIZED.—A person who is aggrieved of a violation of the fiduciary duty established under subsection (c) may bring a civil action in an appropriate United States district court to obtain injunctive or other equitable relief relating to the violation.

(f) DEFINITIONS.—As used in this section—

(1) the term ''designated automobile manufacturer'' means an entity organized under the laws of a State, the primary business of which is the manufacture of automobiles, and any affiliate thereof, if such automobile manufacturer—

(A) has received funds under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.), or funds were obligated under that Act, before the date of enactment of this Act; and

(B) has filed for bankruptcy protection under chapter 11 of title 11, United States Code, during the 90-day period preceding the date of enactment of this Act;

(2) the term ''eligible taxpayer'' means any individual taxpayer who filed a Federal taxable return for taxable year 2008 (including any joint return) not later than the due date for such return (including any extension);

(3) the term ''Secretary'' means the Secretary of the Treasury or the designee of the Secretary; and

(4) the terms ''director'', ''issuer'', ''securities'', and ''securities laws'' have the same meanings as in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).

Mr. ALEXANDER. Madam President, I believe that concludes my remarks and I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. KAUFMAN. Madam President, I ask to speak as in morning business for 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KAUFMAN. I ask unanimous consent to be followed by Senator BROWN.

The PRESIDING OFFICER. Without objection, it is so ordered.

INVESTOR PROTECTION

Mr. KAUFMAN. Madam President, all Americans hope that the ''green shoots'' we have been seeing recently—evidence of the economy turning around—won't wither. One thing that will help make our recovery strong and sustainable is the return of investor confidence. That is why making certain our financial markets operate fairly and openly is so important.

Free and fair markets and democracy are America's two greatest pillars of strength. Our financial markets have long been the engine of American growth and the envy of the world. Efficient and free capital markets are essential to all of what makes America great: investment in private enterprise, the availability of capital to expand and grow our economy through innovation and new ideas, and the ability to save for retirement in hopes that investment will result in comfort for our later years. But we have seen what happens when you take the referees off the field, when we fail to have clear and fair rules for everyone. It is the job of our democratic government to set those rules and to keep the referees—our financial regulators—on the field.

I rise today because we continue to see that our financial markets simply do not operate on a level playing field for all investors. That is a threat to the credibility of our financial markets and, as a result, to our country's economic well-being.

We have an unfair playing field that leaves us with, in effect, two markets: one for powerful insiders and another for average investors; one market for huge volume, high-speed players who can take advantage of every loophole for profit, and another market for retail investors who must play by the rules and whose orders are filled without any special priority. This situation simply cannot continue. It is the national equivalent of ''separate and unequal.''

I offer my colleagues three examples of this two-tier system which undermines the fairness and efficiency of our financial markets. First, today the biggest players on Wall Street are using their automated, high-speed trading programs to engage in short selling of stocks. Informed observers believe organized ''bear raids''—short selling combined with coordinated ''misinformation'' campaigns—contributed to the demise of Lehman Brothers and Bear Stearns, key elements in the collapse of our financial markets last year. With the repeal of the uptick rule in 2007 and no substantial substitute in its place, the threat of such damaging manipulation is still with us.

Since March 3, I have spoken frequently about the urgent need for the SEC to restore the substance of the uptick rule. This rule required investors simply to pause and to wait for an uptick in price before continuing to short sell. Without such a rule in place, investors who own those stocks are more vulnerable to hedge fund bear raiders.

So far, the SEC has initiated rulemaking and conducted on April 8 a roundtable discussion among key experts on some kind of price test that could substantially replace the uptick rule in today's high-speed, high-tech markets. While that process has begun, we have yet to see it bear fruit.

Second, big market players can engage in naked short selling—selling stock for which they have no legal claim and for which they cannot deliver. Since my first speech on this subject in March, I have come to the floor several times and coauthored letters with my colleagues about the need for the SEC to end naked short selling. In that abusive practice, traders bet on shares losing value—shares they have not borrowed and in some cases never even intend to borrow—in time for settlement.

Yesterday, the SEC made permanent a temporary rule they had enacted last fall and proposed some new transparency measures, and the Commission announced plans for a roundtable discussion on September 30—2 months from now. The Commission will finally begin to discuss publicly the potential solutions that a bipartisan group of Senators and I have been urging: either a pre-borrow requirement or a centralized ''hard locate'' system. The Depository Trust and Clearing Corporation tells us it has the capacity and the willingness to implement that system but only if the SEC requires it through a rule.

That is some progress, but we need more urgency at the SEC to implement tougher rules that will stop naked short selling through an enforceable system. This is imperative, because the current ''reasonable belief'' standard is virtually unenforceable, even against those who engage in concerted action to manipulate prices downward.

Yesterday's announcement by the SEC admits that the rule they made permanent yesterday has only reduced fails to deliver by 57 percent. That leaves a lot of room for improvement. Why not have an enforceable system such as that proposed last week by seven Senators of both parties that could end naked short selling once and for all? I am hopeful we will soon see movement on this.

Third, we have the most recent revelation of so-called ''flash orders'' by high frequency traders. These allow exchange members who pay a fee to get a first look at share order flows before the general public. By viewing this buy and sell order information for milliseconds before it goes in the wider market, these investors gain an unfair advantage over the rest. Today I join Senator SCHUMER in urging the SEC to prohibit the use of these flash orders used in connection with optional display periods currently permitted by DirectEdge, Bats Exchange, and NASDAQ.

As the New York Stock Exchange complained to the SEC on May 28, selling flash orders for free provides:

> Non-public order information to a select class of market participants at the expense of a free and open market system.

To use a baseball metaphor, flash orders allow some batters to pay to see the catcher's signals to the pitcher while the rest of us don't see them. We have to make an informed judgment with a normal amount of risk. Markets that permit a privileged few to have special access to information cannot maintain their credibility.

I ask: Is this what is happening on Wall Street today? When millions of Americans have lost so much money in the stock market, do Wall Street actors continue to make record trading profits by exploiting loopholes using high-speed computers?

William Donaldson, former chairman of the SEC and the New York Stock Exchange, has said:

> This is where all the money is getting made . . . If an individual investor doesn't have the means to keep up, they're at a huge disadvantage.

As Senator SCHUMER wrote in his letter:

> If allowed to continue, these practices will undermine the confidence of orderly investors and drive them away from our capital markets.

America simply cannot afford this loss of integrity of its financial markets.

Amazingly, it is a loophole in current regulations that allows this unfair practice. This can and should be fixed immediately.

Flash orders, the uptick rule, and naked short selling are not just a list of complaints. I believe they are interconnected. They are interconnected by an unsupported faith in the religion of self-regulation and liquidity. That religion believes that no price is too high for deeper liquidity—maximizing the volume and frequency of a transaction—because it reveals the greatest amount of information about stock values. There is one more article of faith—that innovation by market players is always beneficial.

When the financial markets were decimalized and the uptick rule repealed, the SEC and leading market institutions claimed that the technology would lead to deeper liquidity and market efficiencies benefiting all investors. High-speed trading, sophisticated algorithms, and high volume short selling all have grown exponentially in recent years.

MIT, our Nation's greatest engineering school, sent 11 percent of its 2008 graduates to work on Wall Street. All this, some say, has led to deeper liquidity.

America was founded with a spirit of entrepreneurship and a celebration of economic innovation. There are so many things Wall Street does right, and historically Wall Street was built on a foundation of trust and credibility. But America was also born from the principle of equal opportunity. While we should keep encouraging the kind of commercial ingenuity that fuels the prosperity of financial markets, we must ensure that technology is not employed to advantage one small group over the rest. That is not what free market is about.

Indeed, there is a place in our markets for high-speed arbitrage functions, because they can and have narrowed bid-ask spreads and lowered the cost of trading for all. High-speed arbitrage also helps price discovery and keeps the prices of similar assets traded in different markets more closely aligned.

When it comes to flash orders, however, I think most investors, even those who trade regularly, are waking up very surprised to learn that these practices are even permitted, just as we were surprised last year to learn about the rampant extent of naked short selling. Many investors have been suspicious for years that insiders on Wall Street hold built-in advantages over average investors. Flash orders are a classic example of being taken aback not by what is illegal but by what is legally occurring directly under the nose of our financial regulators and leading market institutions.

Since I began speaking out against naked short selling, I have heard from some of the biggest companies in America that are concerned about the effects of naked short selling. But they do not want to speak out because they fear that any hint of vulnerability they admit even privately to public officials will leak out and make them the target of these predatory raiders.

I have also heard from investors around the country. They have complained that large broker-dealers are somehow permitted to trade ahead of most investors. These average and even sophisticated investors relate that in their experience they never seem to be able to execute trades at the best available published bid or asking price. They complain that large orders always seem to get a priority over their smaller orders. Until now, I never knew what to make of these claims.

In the New York Times this past Friday, on investor blogs for weeks now, and in a comment letter filed by the New York Stock Exchange on May 28, commentators have begun to explain how flash orders work to, quite literally, ''pick the pockets'' of the average investor. In essence, these traders get a very quick look at all pending orders in advance and through technology can trade ahead of these orders.

I ask unanimous consent that the Times article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 24, 2009]

STOCK TRADERS FIND SPEED PAYS, IN MILLISECONDS

(By Charles Duhigg)

It is the hot new thing on Wall Street, a way for a handful of traders to master the stock market, peek at investors' orders and, critics say, even subtly manipulate share prices.

It is called high-frequency trading—and it is suddenly one of the most talked-about and mysterious forces in the markets.

Powerful computers, some housed right next to the machines that drive marketplaces like the New York Stock Exchange, enable high-frequency traders to transmit millions of orders at lightning speed and, their detractors contend, reap billions at everyone else's expense.

These systems are so fast they can outsmart or outrun other investors, humans and computers alike. And after growing in the shadows for years, they are generating lots of talk.

Nearly everyone on Wall Street is wondering how hedge funds and large banks like Goldman Sachs are making so much money so soon after the financial system nearly collapsed. High-frequency trading is one answer.

And when a former Goldman Sachs programmer was accused this month of stealing secret computer codes—software that a federal prosecutor said could ''manipulate markets in unfair ways''—it only added to the mystery. Goldman acknowledges that it profits from high-frequency trading, but disputes that it has an unfair advantage.

Yet high-frequency specialists clearly have an edge over typical traders, let alone ordinary investors. The Securities and Exchange Commission says it is examining certain aspects of the strategy.

''This is where all the money is getting made,'' said William H. Donaldson, former chairman and chief executive of the New York Stock Exchange and today an adviser to a big hedge fund. ''If an individual investor doesn't have the means to keep up, they're at a huge disadvantage.''

For most of Wall Street's history, stock trading was fairly straightforward: buyers and sellers gathered on exchange floors and dickered until they struck a deal. Then, in 1998, the Securities and Exchange Commission authorized electronic exchanges to compete with marketplaces like the New York Stock Exchange. The intent was to open markets to anyone with a desktop computer and a fresh idea.

But as new marketplaces have emerged, PCs have been unable to compete with Wall Street's computers. Powerful algorithms—''algos,'' in industry parlance—execute millions of orders a second and scan dozens of public and private marketplaces simultaneously. They can spot trends before other investors can blink, changing orders and strategies within milliseconds.

High-frequency traders often confound other investors by issuing and then canceling orders almost simultaneously. Loopholes in market rules give high-speed investors an early glance at how others are trading. And their computers can essentially bully slower investors into giving up profits—and then disappear before anyone even knows they were there.

High-frequency traders also benefit from competition among the various exchanges, which pay small fees that are often collected by the biggest and most active traders—typically a quarter of a cent per share to whoever arrives first. Those small payments, spread over millions of shares, help high-speed investors profit simply by trading enormous numbers of shares, even if they buy or sell at a modest loss.

''It's become a technological arms race, and what separates winners and losers is how fast they can move,'' said Joseph M. Mecane of NYSE Euronext, which operates the New York Stock Exchange. ''Markets need liquidity, and high-frequency traders provide opportunities for other investors to buy and sell.''

The rise of high-frequency trading helps explain why activity on the nation's stock exchanges has exploded. Average daily volume has soared by 164 percent since 2005, according to data from NYSE. Although precise figures are elusive, stock exchanges say that a handful of high-frequency traders now account for a more than half of all trades. To understand this high-speed world, consider what happened when slow-moving traders went up against high-frequency robots earlier this month, and ended up handing spoils to lightning-fast computers.

It was July 15, and Intel, the computer chip giant, had reporting robust earnings the night before. Some investors, smelling opportunity, set out to buy shares in the semiconductor company Broadcom. (Their activities were described by an investor at a major Wall Street firm who spoke on the condition of anonymity to protect his job.) The slower traders faced a quandary: If they sought to buy a large number of shares at once, they would tip their hand and risk driving up Broadcom's price. So, as is often the case on Wall Street, they divided their orders into dozens of small batches, hoping to cover their tracks. One second after the market opened, shares of Broadcom started changing hands at $26.20.

The slower traders began issuing buy orders. But rather than being shown to all potential sellers at the same time, some of those orders were most likely routed to a collection of high-frequency traders for just 30 milliseconds—0.03 seconds—in what are known as flash orders. While markets are supposed to ensure transparency by showing orders to everyone simultaneously, a loophole in regulations allows marketplaces like Nasdaq to show traders some orders ahead of everyone else in exchange for a fee.

In less than half a second, high-frequency traders gained a valuable insight: the hunger for Broadcom was growing. Their computers began buying up Broadcom shares and then reselling them to the slower investors at higher prices. The overall price of Broadcom began to rise.

Soon, thousands of orders began flooding the markets as high-frequency software went into high gear. Automatic programs began issuing and canceling tiny orders within milliseconds to determine how much the slower traders were willing to pay. The high-frequency computers quickly determined that some investors' upper limit was $26.40. The price shot to $26.39, and high-frequency programs began offering to sell hundreds of thousands of shares.

The result is that the slower-moving investors paid $1.4 million for about 56,000 shares, or $7,800 more than if they had been able to move as quickly as the high-frequency traders.

Multiply such trades across thousands of stocks a day, and the profits are substantial. High-frequency traders generated about $21 billion in profits last year, the Tabb Group, a research firm, estimates.

''You want to encourage innovation, and you want to reward companies that have invested in technology and ideas that make the markets more efficient,'' said Andrew M. Brooks, head of United States equity trading at T. Rowe Price, a mutual fund and investment company that often competes with and uses high-frequency techniques. ''But we're moving toward a two-tiered marketplace of the high-frequency arbitrage guys, and everyone else. People want to know they have a legitimate shot at getting a fair deal. Otherwise, the markets lose their integrity.''

Mr. KAUFMAN. Madam President, in America where all are created equal, Wall Street technology has permitted the powerful to exploit loopholes that make some investors now more equal than others.

The most basic principle of a free market system is that anyone can transact goods at prices based on a free and open market, not based on some kind of insider status. These flash order practices fly in the face of Regulation NMS, which the SEC issued to guarantee that trades are executed at the best price as soon as orders become available. With flash orders, there doesn't seem to be any guarantee of this anymore.

I call again for the SEC to act quickly to protect investors in four critical areas. First, we need to implement a rule that provides the substantive protections removed when the uptick rule was rescinded in 2007.

Second, the SEC must end naked short selling. No one should be able to short a stock unless they have located specified shares of stock and obtained a contractual claim to borrow the stock in time for delivery. The SEC's announcement yesterday of plans for more discussion does not accomplish this. We need concrete action soon by the SEC.

Third, the SEC must prohibit the use of flash orders. No one—no one—should be permitted to use information asymmetry that permits high-speed computer trading to have an advantage over average investors.

Finally, the SEC should establish disclosure and transparency equality. The disclosure requirements that apply to pooled funds worth greater than $100 million should apply uniformly to all, including hedge funds, for both long and short positions, and the level of transparency for order flows should be the same for all.

I truly believe our new SEC chairman is focused on these issues and she is making progress on a number of fronts. But it is the job of Congress to urge regulators to fix problems. SEC Chairman Schapiro inherited an SEC that had made many mistakes. I respect the fact that Chairman Schapiro is working hard every day to right a foundered ship. The other commissioners are joining her in that task.

In closing, I implore the SEC once again to act urgently to fulfill its core mission: protecting investors. The reason protecting investors is so important is that by doing so, the SEC ensures the credibility of the financial markets. If the SEC refuses to restore a level playing field to rebuild investor confidence in our market, then we in Congress will have to step in and do it ourselves.

Protecting investors is too important to the Nation, to the integrity of our financial markets, and to our economic recovery. I say again that legitimate capital markets and arbitrage functions have value, like legitimate short-selling has value. But exploiting an unequal playing field only skims our Nation's wealth. It doesn't create wealth or value, except for a privileged few. That harms the integrity of our financial markets and, by doing so, threatens the very foundation of our economic well-being.

As Americans, we must have faith in our institutions, both the markets and government, and we must believe that if we work hard and play by the rules, all will be treated equally. That is what is at stake. Our financial industry and capital markets can be a powerful engine for the American economy. But the SEC and Congress must work together to restore investor quality, integrity, and credibility of our financial markets.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from Ohio is recognized.

Mr. BROWN. Mr. President, I thank Senator KAUFMAN for his bold advocacy on behalf of consumers and investors and for a better financial system.

Mr. KAUFMAN. I thank the Senator.

HEALTH CARE REFORM

Mr. BROWN. Mr. President, last week I spoke on the Senate floor about the importance of the health care reform bill that passed the Senate in the Health, Education, Labor, and Pensions Committee.

I spoke about how the legislation would reduce costs for families and businesses, how it would protect consumer choice of doctors, hospitals, and insurance plans, and how it would assure health care stability and security for all Americans.

I spoke about how the bill's public option would increase competition in the insurance market, spurring private insurers to offer better premiums and better coverage.

I explained how the bill's insurance market reforms would prevent insurers from dodging and weaving to avoid paying claims—an experience most of us have had.

Today, I am here to talk about a provision in the HELP Committee bill that I am not proud of—a provision that none of us should be proud of. The committee adopted an amendment that would discourage medical innovation and perpetuate inflated prices for the medicines that millions of Americans need. This provision locks taxpayers into paying extraordinarily high prices for medicines covered by Medicaid and Medicare, covered by the VA system, and covered by the military's TRICARE system. The provision also means huge payments by corporations and small businesses that insure their employees, and the provision locks patients into paying astronomical out-of-pocket costs for medicines they cannot do without. The medicines I am talking about are known as biologics. They are medicines used to treat conditions such as multiple sclerosis, arthritis, Alzheimer's, diabetes, and cancer. Spending on brandname biologics is growing faster than spending on any other type of medicine.

All too often, the pricetag for this type of drug is simply too high for the patient who needs it. For instance, annual treatment for breast cancer with the brandname biologic drug Herceptin costs $48,000. Even if you are lucky enough to have health insurance and you are paying 20 percent copay, that is $9,600 a year. More than 192,000 American women will be diagnosed with breast cancer in 2009. How are they going to afford that kind of drug?

Annual treatment for rheumatoid arthritis with the brandname biologic called Remicade costs $20,000. Again, even if you are lucky enough to have insurance—pretty good insurance—you will probably have a copay of 20 percent, which is $4,000 a year. That is $80 every single week, in addition to all your other health care expenses, and maybe the fact that you don't have income because you are going through rheumatoid arthritis treatment. At least 1.3 million Americans suffer from rheumatoid arthritis.

Annual treatment for colon cancer with the brandname biologic Avastin costs $100,000. Again, if you are lucky enough to have good health insurance, and you are paying a 20 percent copay, that is $20,000. That is $400 a week just for your copay, on your drug, in order to deal with your colon cancer. This is far too expensive for many of the 112,000 men and women in America who are diagnosed with colon cancer each year.

The typical household income in Ohio, which is not too much different from the State of the Presiding Officer, Colorado, is $46,000 a year.

We are talking about a drug that costs $20,000, another drug that costs $48,000, and another drug that costs $100,000 a year, and you are trying to pay with an income of $46,000 a year? Even if you have good insurance, your copay alone will break the bank. You get the picture.

More than two decades ago, in response to consumer outrage over the traditional price of drugs, Congress passed the Drug Price Competition and Patent Restoration Act of 1984, known as the Hatch-Waxman Act. That act created a generic pathway for traditional medicines. Prior to that bill, the FDA had no approval process to get generic drugs, competitive drugs, similar drugs after they have gone off patent, identical drugs that can cure you just like brandname drugs can, but there was no allowance to bring those generic drugs to market.

A quarter century ago, Congress took care of that. We need a similar generic pathway for biologics. But legislation granting 12 years of ''exclusivity''—a better term is 12 years of ''monopoly''—protection, on top of the 20 years of patent protection—so these companies already have patents, and I understand sometimes several years of their patents are used up, and several years of the 20-year patents are used up during the approval process—maybe even 10 years. But on top of that, we are going to give them 12 years of monopoly protection, 12 years of exclusivity—the way we talk here—12 years of monopoly protection, the way that most people understand it. That gives a drug company a monopoly that no other drug in the market enjoys and no other product on the market enjoys.

What we have done is taken these drugs that cost $12,000 a year, $20,000 a year, $40,000 a year, or $100,000 a year, and set them in a different category to protect them—a protection that nobody else in our entire economic system of protection, monopoly protection, and nobody else in our economic system enjoys. These are drugs that save people's lives. These are treatments for people they cannot get any other way.

Why do we carve out monopoly protection for these drug companies, when we don't do it for any other kinds of drugs—so-called orphan drugs—or any other consumer product? Why do we do it? It could not be because the biotech companies are really good lobbyists, could it or because of the campaign contributions they make to my colleagues—it couldn't be that, could it? I don't know the explanation.

Americans are worried that their employer will drop their health care coverage because of the cost of biologics. A 12-year biologic monopoly balloons the cost of employee-sponsored health care. Consumers worry that they won't be able to afford individual coverage. You will see, in some cases, some employers totally ending their health care coverage overall—the insurance they have for employees—because of the cost of biologics. Imagine you are a company with 100 employees, and you are a generous employer and you pay your people pretty well, and you are doing OK in this economy—not great but you have insurance for everybody; and of these 100 employees you have, say 4 or 5 get really sick. Say one takes Herceptin and one takes Remicade and one takes another one of these drugs—say, the $100,000 drug, Avastin. Do you know what that employer is going to have to do because of the cost? They are probably going to have to end health care coverage for all of their